

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6112

PETITION OF JAMES T. GORDON
(Hearing held January 18, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, March 17, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a one-story addition that requires a thirteen (13) foot variance as it is within two (2) feet of the streetline setback. The required streetline setback is fifteen (15) feet.

The petitioner was represented Patrick O'Neal, Esquire, and Steven Robins, Esquire, at the public hearing. William Joyce, an engineer, appeared as a witness for the petitioner.

Stephen Burks, president of the Greenwich Forest Citizen's Association, and Collin Church, a member of the Greenwich Forest Citizen's Association, appeared in support of the variance request.

The subject property is Lot 21, Block B, Bradley Park Hills Subdivision, located at 5427 York Lane, Bethesda, Maryland, 20814, in the R-60 Zone (Tax Account No. 7693647).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 14 x 22.4 foot one-story garage addition.
2. Mr. O'Neal stated that the subject property is a corner lot, located at the intersection of Moorland and York Lanes. Mr. O'Neal stated that Moorland Lane is a dedicated, unimproved street. A pedestrian pathway extends for two blocks from the intersection of York and Moorland Lanes to Lambeth Road and Moorland Lane. The subject property is a rectangular shaped lot that widens from front to back and that is 8,999 square feet in size. Mr. O'Neal stated that the petitioner

filed an abandonment request for a portion of Moorland Lane with Montgomery County and that the County Council denied the request and determined that Moorland Lane should be preserved as public open space. See, Exhibit No. 12 [County Council Resolution 15-1118].

3. Mr. Robins stated that originally the public right-of-way was dedicated for use as a public road and that it has been determined that the unimproved right-of-way should remain as open-space for public use, and that this determination changed the use of the right-of-way. Mr. Robins stated that the determination by the County Council prevents access to the petitioner's property from Moorland Lane and that the only access to the subject property is via York Lane, and that having only a single access to the property creates a hardship for the property owner. See, Exhibit No. 20 [site plan/rendered version of Exhibit No. 4(a) site plan].
4. Mr. O'Neal stated that the petitioner's home was constructed with the expectation that there would be access off Moreland Lane; either as an abandonment of the right-of-way or the ability to pave a driveway as on abutting Lot 7. Mr. O'Neal stated that the neighborhood is opposed to any paving in the right-of-way. Mr. Robins stated that access to the subject property via the right-of-way would not be for the same type of structure as asked for in the variance request, it would be for an accessory structure/detached garage. Mr. Robins stated that a detached garage presents serious practical difficulties for the property owner.
5. The petitioner testified that he and the neighbor that adjoins the other side of the right-of-way filed a petition for abandonment. The petitioner testified that the neighbors on Lot 7, Block B and Lots 10 and 11, Block I, also signed a petition in support of the abandonment request. Mr. Robins stated that the County Council denied the petition for abandonment and determined that the public right-of-way should be maintained as open-space for the use and enjoyment of the neighborhood.
6. The petitioner testified that the west side of his house abuts a 50-foot wide unimproved right-of-way and that his house is 15 feet from the right-of-way. The petitioner testified that currently in the right-of-way is a gravel driveway that was part of the permitting process when his house was built. The petitioner testified that the right-of-way is used as a pedestrian path and that the pedestrian path extends from his property to Harwood Road. The petitioner testified that the topography of his lot slopes downward toward Harwood Road. The petitioner testified that because Moorland Lane is a dedicated road, as a homeowner, he could get a permit from the Department of Permitting

Services (DPS) to build a driveway in the right-of-way and that he has received the permit to build in the right-of-way.

7. The petitioner testified that his property is unique because Moorland Lane, which is a dedicated road and would typically allow for a right-of-way access, provides no access from the road to his property. The petitioner testified that it is desired by the County Council that the right-of-way be maintained in its current open-space, undeveloped state. The petitioner testified that the construction of a garage in the back yard would create the ire of the neighborhood and that there would be no ability to build a garage without a variance.
8. Mr. Robins stated that the petitioner's abandonment request is unique for its impact on the subject property because the use of the right-of-way changed with the County Council's determination, the right-of-way changed from a dedicated road to public open-space. Mr. Robins stated that this change in use of the road, impacts the configuration of the subject property. Mr. Robins stated that the application of the zoning regulations creates a practical difficulty and hardship for the petitioner and that the variance request would provide a remedy for the property owner. Mr. Robins stated that the variance would permit the petitioner to construct a driveway on his property and avoid a disturbance to the right-of-way.
9. Mr. Joyce testified that the subject property's slopes from south to north and that the proposed structure would be sited about 2 feet lower than the first-floor of the house. Mr. Joyce testified that the subject property is at a higher elevation than the adjoining lot, Lot 22, and that the property widens from front to back. Mr. Joyce testified that there is also concern about drainage at the front of the lot. Mr. Joyce testified that access from York Lane would require a significant amount of excavation and grading to accommodate a structure at a lower level. Mr. Joyce testified that the Moorland Lane can not be used for access to the petitioner's lot as would be typical from a right-of-way. Mr. Joyce testified that an existing sewer line further restricts new construction on the property.
10. Mr. Joyce testified that only Lot 13, Block 1, fronts on Moorland Lane, which is located at the intersection of Moorland Lane and Harwood Road. Mr. Joyce testified that Lot 7, Block B; Lot 12, Block I; Lot 4, Block F; Lot 6, Block I; Lot 12, Block I; Lot 13, Block I; all are lots that abut Moorland Lane. Mr. Joyce testified that the petitioner could built a garage on the subject property if a variance were not granted, but that the structure would have to be detached, and not an attached structure. Mr. Joyce testified that Lot 7, the abutting lot to the petitioner's lot, has a right-of-way access to the property. See, Exhibit

Nos. 14 [zoning vicinity map] and 23 [rendered site plan with detached garage].

11. Mr. Joyce testified that a driveway could be constructed on the petitioner's lot, but that it would be built up against the house and would require grading to step-up steps. Mr. Joyce testified that the petitioner does have a permit for construction of a right-of-way access to his property and that if a variance is not granted, the petitioner would have to put a driveway within the right-of-way, remove several trees, to get to a detached garage in his rear yard.
12. Mr. Burks testified that the association supports the variance request, as proposed, because the garage would not disturb the natural state of the right-of-way and that the petitioner would remove the existing gravel in the right-of-way and replace it with soil and grass seed. Mr. Church testified that the neighborhood supports the variance request as it will maintain the right-of-way in its current, natural, wooded and undeveloped state.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot is a rectangular shaped lot in a neighborhood characterized by rectangular lots. The Board finds that the petitioner's lot is wider and 50% larger than most of the neighboring lots. The Board finds that the subject property has no exceptional or extraordinary topographical conditions peculiar to the subject property. The Board notes that the record contains testimony about the sloping topography of the lot, however the record contains no testimony that the sloping topography is limited to the petitioner's lot or that this is a characteristic limited to the petitioner's lot.

The Board finds that the required setbacks, as currently applied, have been the required setbacks for the subject property since

before any action by the County Council with respect to the adjacent right of way and that the history of the property and the County Council's treatment of the use of the right-of-way have not changed the use of the subject property or the required setbacks for the property. The Board therefore finds that the circumstances of the County Council's actions regarding the adjacent right of way have had no effect on the subject property for the purposes of evaluating the impact of the applicable zoning requirements on the property.

The Board notes that the subject property is uniquely benefited, rather than compromised, by the development of the lot, since the lot's development incorporates the differences in the required setbacks for the side and front yards, along with the impact of the right-of-way, and the subject property is larger and wider than the neighboring lots. The subject property also benefits from its shape, as it widens from front to rear.

The Board notes that the Lot 7, a corner property opposite the petitioner's lot, uses a right-of-way access to that property and that this would be a similar circumstance for the petitioner's lot. The Board notes that new construction for petitioner's purposes could be accommodated on the subject property without the need for a variance and that the property owner has received a permit to construct a driveway in the right-of-way that would provide access to the property.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of thirteen (13) feet from the required fifteen (15) foot streetline setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, and with Wendell M. Holloway, in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

A handwritten signature in black ink, reading "Allison D. Fultz". The signature is written in a cursive, flowing style.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 17th day of March, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.